

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HANNA SAWKA, Individually, and as
Administratrix of the Estate of
Jan Sawka, Deceased,

Plaintiff,

-v-

M.D. MAREK BALUTOWSKI and
THE INSTITUTE FOR FAMILY HEALTH,

Defendants.

USDC SDNY
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ELECTRONICALLY FILED
DOC #:
DATE FILED: 1/30/18

No. 17 Civ. 08931 (NRB)

STIPULATION AND ORDER OF SUBSTITUTION AND VOLUNTARY DISMISSAL

WHEREAS, on or about July 28, 2014, Hanna Sawka, individually and as the Administratrix of the estate of Jan Sawka, deceased ("Plaintiff"), filed a complaint in the above-captioned matter (the "Complaint") in New York Supreme Court, County of New York;

WHEREAS, on November 15, 2017, Defendants removed the above-captioned matter to the United States District Court for the Southern District of New York;

WHEREAS, the Complaint alleges claims against Marek Balutowski, M.D., and The Institute for Family Health (the "Government Defendants"), who have both been deemed eligible for coverage under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671 *et seq.* (the "FTCA"), pursuant to the Federally Supported Health Centers Assistance Act, 42 U.S.C. § 233(a) & (g);

WHEREAS, the United States of America is the only proper federal defendant in an action brought under the FTCA, 28 U.S.C. § 2679(d); and

WHEREAS, Plaintiff has not exhausted her administrative remedies in accordance with 28 U.S.C. § 2675(a);

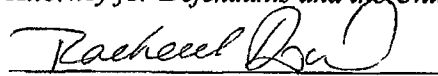
NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the parties and their counsel, that:

1. Plaintiff hereby substitutes the United States of America as the sole defendant in place of the Government Defendants;
2. Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), Plaintiff voluntarily dismisses all claims against the United States of America in the above-referenced action, without prejudice and without costs or attorneys' fees;
3. The parties stipulate that such dismissal is for failure to first present a claim pursuant to 28 U.S.C. § 2675(a), as contemplated in 28 U.S.C. § 2679(d)(5);
4. The parties stipulate that the Court's approval of this Stipulation and Order will constitute a dismissal for purposes of 28 U.S.C. § 2679(d)(5);
5. The United States expressly reserves all defenses, including as to the timeliness of Plaintiff's claims under the FTCA;
6. This Stipulation may be signed in counterparts.

Dated: New York, New York
January 26, 2018

GEOFFREY S. BERMAN
United States Attorney for the
Southern District of New York
Attorney for Defendants and the United States

By:

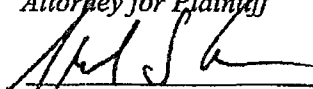


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Dated: New York, New York
January 25, 2018


MORELLI LAW FIRM, PLLC
Attorney for Plaintiff

By:



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SO ORDERED:



HON. NAOMI REICE BUCHWALD
United States District Judge

rm

Dated: January 30, 2018